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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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ORTIZ, EDGARDO

ART UNIT	PAPER NUMBER
2815	

DATE MAILED: 04/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/492,243	Applicant(s) He Et.al.	9/21 
	Examiner Edgardo Ortiz	Art Unit 2815	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Jan 25, 2002

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 3, 4, 9, and 12-14 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 3, 4, 9, and 12-14 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on Feb 11, 2002 is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____

16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) Other: _____

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DETAILED ACTION

This Office Action is in response to an amendment filed January 25, 2002 on which Applicant amended claims 3 and 9, canceled claims 1-2 and 10-11 and added new claims 13 and 14.

Claim Objections

1. Claim 4 is objected to because of the following informalities: the claim is dependent upon canceled claim 1, when it should be dependent upon amended claim 3. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 recites the limitation "each floating NMOS transistor" in line 28 of page 9. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 3, 4, 9, 12, 13 and 14 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Pio et.al. (U.S. Patent No. 5,894,146) in view of Peng (U.S. Patent No. 5,851,886). With regard to Claim 3, Pio teaches a memory array comprising a plurality of floating gate transistors (2) connected in series, each floating gate transistor having formed, in a well of a substrate, a source (15) region and a drain (16) region and a channel region separating said source and drain regions.

However, Pio fails to show the non-uniform concentration of dopant as claimed. Peng teaches a field effect transistor that includes a gate transistor having source and drain regions (190, 195) and channel region (170) separating the said source and drain regions and having a non-uniform concentration of dopant comprising a retrograde concentration distribution in the direction from the surface of a substrate (110) and wherein said non-uniform concentration comprises a lateral concentration distribution along the length of the channel that is higher in a region generally towards the central portion of the channel region and decreases toward the opposing source and drain regions. Therefore, it would have been an obvious modification to someone with ordinary skill in the art, at the time of the invention, to modify the structure as taught by Pio to include a channel region with a retrograde concentration distribution in the direction from the surface of a substrate and comprising a lateral concentration distribution along the length of the channel that is higher in a region generally towards the central portion of the channel region and decreases toward the opposing source and drain regions, as clearly suggested by Peng, in order to improve threshold voltage sensitivity in the channel region.

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With regard to Claims 4 and 12, the claims contain the limitation "the non uniform concentration is formed by a tilted ion implantation utilizing as a mask a gate structure of each floating gate NMOS transistor", this is a product by process limitation. A "product by process" claim is directed to the product per se, no matter how actually made, In re Brown, 173 USPQ 685; In re Luck, 177 USPQ 523; In re Fessmann, 180 USPQ 324; In re Avery, 186 USPQ 161; In re Wertheim, 191 USPQ 90 (209 USPQ 554 does not deal with this issue); In re Marosi et al, 218 USPQ 289; and particularly In re Thorpe, 227 USPQ 964, all of which make it clear that it is the patentability of the final product per se which must be determined in a "product by process" claim, and not the patentability of the process, and that an old or obvious product produced by a new method is not patentable as a product, whether claimed in "product by process" claims or not. Note that applicant has the burden of proof in such cases, as the above case law makes clear.

With regard to Claim 9, Pio teaches a memory array comprising a plurality of floating gate transistors (2) connected in series, each floating gate transistor having formed, in a well of a substrate, a source (15) region and a drain (16) region and a channel region separating said source and drain regions.

However, Pio fails to show the non-uniform concentration of dopant as claimed. Peng teaches a field effect transistor that includes a gate transistor having source and drain regions (190, 195) and channel region (170) separating the said source and drain regions and having a non-uniform

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concentration of dopant comprising a retrograde concentration distribution in the direction from the surface of a substrate (110) and wherein said non-uniform concentration comprises a lateral concentration distribution along the length of the channel that is higher in a region generally towards the central portion of the channel region and decreases toward the opposing source and drain regions. Therefore, it would have been an obvious modification to someone with ordinary skill in the art, at the time of the invention, to modify the structure as taught by Pio to include a channel region with a retrograde concentration distribution in the direction from the surface of a substrate and comprising a lateral concentration distribution along the length of the channel that is higher in a region generally towards the central portion of the channel region and decreases toward the opposing source and drain regions, as clearly suggested by Peng, in order to improve threshold voltage sensitivity in the channel region.

With regard to Claims 13 and 14, Applicant merely labels the claimed invention as "the transistor is an NMOS transistor" and "the NMOS transistor is a floating gate transistor", however the claimed invention does not structurally distinguish from that taught by the prior art.

Response to Arguments

4. Applicant's arguments with respect to claim 3, 4, 9, 12, 13 and 14 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Edgardo Ortiz (Art Unit 2815), whose telephone number is (703) 308-6183 or by fax at (703) 308-7722. In case the Examiner can not be reached, you might call Supervisor Eddie Lee at (703) 308-1690. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 2800 receptionist whose telephone number is (703) 308-0956.

EO/AU 2815

4/15/02



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